

STATE OF SOUTH CAROLINA)	BEFORE THE CHIEF PROCUREMENT OFFICER
COUNTY OF RICHLAND)	
)	
In the Matter of Contract Controversy of:)	DECISION
Mattiola Services, LLC)	Case No. 2009-148
)	
v.)	
)	
Department of Corrections)	
)	
SCDC IFB No. 358347)	Posting Date: July 23, 2010
P.O. 300193180)	Mailing Date: July 23, 2010
<u>Lead Removal from Firing Ranges</u>)	

This matter is before the Chief Procurement Officer (CPO) pursuant to a request from Mattiola Services LLC (Mattiola) for resolution of a contract controversy under the provisions of Section 11-35-4230 of the South Carolina Consolidated Procurement Code. With this best value bid, the South Carolina Department of Corrections (SCDC) sought to procure a contractor to remove lead from its thirteen firing ranges and awarded purchase order #300193180 to Mattiola for the service. In its letter dated November 30, 2009, Mattiola alleged that SCDC provided a misleading and inaccurate chart regarding the firing ranges. Accordingly, Mattiola contended that SCDC owed it \$157,114 for additional expenses and lost profit.

A hearing was held on June 9, 2010.¹ Appearing before the CPO were Mattiola, represented by Brian P. Robinson, Esquire, and SCDC, represented by Harry H. Stokes, Jr., Esquire.

NATURE OF PROTEST

The letter of protest is attached and incorporated herein by reference.

FINDINGS OF FACT

The following dates are relevant to the protest:

¹ The CPO originally scheduled the hearing for January 19, 2010, but continued the matter at Mattiola's request. When the hearing was rescheduled for March 15, 2010, Mattiola then requested the matter be continued for an extended period due to health reasons, which the CPO granted. In May 2010, the CPO attempted to reschedule the hearing. However, SCDC requested it be scheduled for June instead due to implementation of the new statewide accounting system.

1. On November 19, 2008, SCDC issued the original solicitation, which was an invitation for bids (IFB). [Ex. 1] The IFB offered a site visit at Broad River Road, which was held on December 1, 2008.
2. Following the site visit, SCDC cancelled the IFB on December 1, 2008. [Ex. 5]
3. On January 9, 2009, SCDC reissued the solicitation as a best value bid (BVB). [Ex. 2] In the BVB, SCDC offered prospective bidders site visits to the individual ranges to be requested and scheduled before January 20, 2009. [Ex. 2, p. 13]
4. On January 22, 2009, SCDC closed the question and answer period.
5. On February 12, 2009, SCDC opened the bids received.
6. On March 9, 2009, SCDC accepted Mattiola's offer by posting a statement of award. [Ex. 4]
7. On July 6, 2009, Mattiola began work at the Tyger River Correctional Institution (Tyger River).
8. Before finishing work at Tyger River, Mattiola began work at MacDougall Correctional Institution (MacDougall) on July 10, 2009.
9. At some later point, Mattiola worked on and completed the ranges at the Turbeville and Wateree River Correctional Institutions. Mattiola also began work at the three sites at Broad River Road Correctional Institution (Broad River).
10. In a letter dated September 14, 2009, Tom Schafer, Mattiola's General Manager, advised Thomas Marino, SCDC's procurement officer, of lower than expected yields from SCDC's firing ranges and suggested it was caused by SCDC's solicitation, particularly the informational chart on the firing ranges [Ex. 2, p. 16] Mattiola also incorrectly indicated that only one site visit at one location was offered. At that time, Mattiola requested SCDC pay \$77,624 to "allow Mattiola Services LLC to breakeven on a direct and indirect cost basis" and indicated that Mattiola "would also consider completing the rest of the ranges on a time and material basis." [Ex. 8]
11. On September 24, 2009, Marsha Kjoller, SCDC Director, Office of Budget and Resource Management, disputed Mattiola's claims and responded "under no circumstances will the S.C. Department of Corrections (SCDC) be making a payment of any nature to Mattiola Services, LLC, for services provided under the currently existing contract. The contract is at zero cost and will not be altered or broken." Ms. Kjoller wrote further, "At this time, SCDC is canceling the contract with Mattiola Services, Inc. There will be no payment forthcoming from SCDC, nor will we hold Mattiola responsible for completing the contract." [Ex. 9]
12. On November 30, 2009, Mattiola asked the CPO to resolve the controversy.

ADDITIONAL BACKGROUND

SCDC issued a solicitation seeking best value bids “to remove and recycle the lead projectiles” from thirteen outdoor firing ranges at no cost to the State. In the BVB, SCDC listed the thirteen outdoor ranges to be cleaned and required the contractor to do the following at no cost to SCDC:

- remove/screen out the spent lead projectiles/fragments;
- remove the lead off-site for recycling;
- furnish SCDC with a copy of a Certification of Destruction and/or recycling with completed bid document;
- reconstruct soil berms and restore the site to existing conditions; and
- stockpile unusable soil in an area designated by SCDC at each site.

[Ex. 2, p. 7, Scope of Work/Specifications] SCDC’s solicitation also included Attachment #1, which contained certain information for each of the thirteen firing ranges including the berm sizes, the depths to which SCDC required the berms to be cleaned, the dates the sites were last cleaned, the frequency of use, the number of shooters, and the types of rounds typically used. [Ex. 2, p. 16 – See also attached.] In the Bidding Schedule/Price-Business Proposal, SCDC reiterated that this was a revenue-generating solicitation and directed bidders to enter the amount the vendor was offering to pay SCDC for the lead and brass removed from the firing ranges. However, vendors were permitted to enter an amount of \$0.00. [Ex. 2, p. 13]

In its response, Mattiola offered a bid price of “\$0.00, Zero Dollars” expecting to recover its expenses through reclamation of the metals harvested from SCDC’s firing ranges. Mattiola also guaranteed to complete the work for all thirteen firing ranges within 120 days of the date of award.

[Ex. 3] SCDC accepted the bid and awarded Mattiola the contract. [Ex. 4]

MATTIOLA’S ARGUMENT

Mattiola alleges that SCDC misrepresented the potential lead harvest from its firing ranges. Specifically, Mattiola contends that Attachment #1 in SCDC’s solicitation was misleading, which caused Mattiola to inaccurately estimate the amount of lead it could expect. Most notably, Mattiola claims that

SCDC provided incorrect data in the columns for the depth to be cleaned, the frequency of use, and the number of shooters and that Mattiola had used this data in its calculations and bid preparation.

Accordingly to Mattiola, it was entitled to rely upon the information provided by SCDC absent any language restricting its reliance and “[h]ad the chart correctly indicated the amount of lead in the berms, Mattiola Services would have bid a much higher number.” Therefore, Mattiola argues that SCDC breached the implied warranty of suitability of plans and specifications and that Mattiola is entitled to \$171,437 for its anticipated profit plus the loss sustained. [Ex. 17]²

Mattiola also contends that it was entitled to stop work until it could either renegotiate the payment term or until it became apparent that SCDC would not pay. Further, Mattiola argues it is no longer required to proceed since SCDC terminated the contract on September 24, 2009.

SCDC’S RESPONSE

SCDC responds that it made no representations or estimations about the amount of lead in the berms and offered no directions or suggestions on how the bidders were to calculate their estimated yield. Since it had no prior experience with firing range remediation, SCDC admits it could not estimate the amount of lead which could be recovered. According to SCDC, it had gathered and provided the information in Attachment #1 at the request of prospective bidders. SCDC denies that the information contained in Attachment #1 was inaccurate. SCDC acknowledges that the chart was not perfect because it did not include information such as the course of fire, the meaning of the number of shooters³, or the number of rounds fired during each shooting event. However, SCDC argues that no vendors asked for clarification or submitted questions. Further, a site visit was held at Broad River in the original solicitation, which was ultimately cancelled due to lack of specificity, but no vendors requested site visits to the different locations as SCDC had offered in the revised solicitation.

² This is a revised figure. In its contract controversy letter, Mattiola had requested \$157,115. [Ex. 11]

Therefore, SCDC contends that Mattiola's claim should be denied because Attachment #1 was, at most, a patent ambiguity, which Mattiola failed to timely address.

SCDC also argues that it should not be held responsible for the additional expenses because Mattiola did not request a change order or reconsideration of its monetary offer before bringing in the additional equipment for secondary separation. Accordingly, SCDC contends that Mattiola, not SCDC, breached the contract when it failed to seek proper approval for a price increase. SCDC further contends Mattiola's letter dated September 14, 2009, which indicated a refusal to perform without a price increase, amounted to a contract violation. [Ex. 8]

Finally, SCDC explains that the purpose of the solicitation was to hire a contractor to resolve a problem with "splash back" or rounds ricocheting from the safety berms built to capture the rounds fired beyond the firing range targets. However, this problem still exists. According to SCDC, the schedule had requested Mattiola start at Tyger River. After rain delays and discovering the berms were clay, not sand, Mattiola asked to move to the Broad River sites before finishing Tyger River. Mattiola left the Tyger River range in a state of disrepair without completing the remediation or reparation of the site. In fact, of the thirteen ranges to be cleaned, Mattiola only performed work at seven – Tyger River, MacDougall, Turbeville, Wateree, and the three Broad River sites. According to SCDC, the only sites where Mattiola completed the work and restored the berms as required by the contract were Turbeville and Wateree.⁴

³ SCDC noted that the column containing the number of shooters did not indicate whether it was a figure for daily, monthly, annually or over the life of the berm but believed it reflected the number of shooters a month.

⁴ SCDC did not, however, file a counter claim against Mattiola.

CONCLUSIONS OF LAW

Mattiola's breach of warranty claim is based on its allegation that the data in Attachment #1 was incorrect and therefore that SCDC had misrepresented the amount of lead to prospective bidders. However, the CPO concludes that Mattiola failed to prove that this information provided by SCDC was inaccurate.

The case of Robert E. Lee & Co. v. Commission of Public Works of City of Greenville, 248 S.C. 84, 149 S.E.2d 55 (1966), which is relied upon by Mattiola, is distinguishable. In Robert E. Lee, the City had hired a builder to construct a water pipeline. As part of the bidding process, the City stated that it had made borings to determine the subsurface conditions and indicated the location and logs of the test holes would be shown on the plans provided. Although the true results were known to the owner, the plans did not disclose the unfavorable conditions gathered from the borings. The builder sued after encountering ground water and subsoil conditions that were not on the plans, which resulted in increased construction costs. The Court held that the City was liable because when it undertook to reveal the results it was required to do so accurately and fully. Id. Unlike in Robert E. Lee, Mattiola did not establish that SCDC provided incorrect data or intentionally misrepresented the information.

The CPO finds that this matter is more comparable to L-J, Inc. v. S.C. State Highway Department, 270 S.C. 413, 242 S.E.2d 656 (1978), in which the State had hired joint contractors to relocate and construct three and a half miles of a mountainous roadway. The contract called for the excavation of some eight million cubic yards of unclassified material and included results from test piles and borings at specific places. However, the State made no estimate of how much of the material was rock and how much was dirt. The contractors did not make any test borings of their own and instead assumed the rock lay on a level plane and used only the boring information provided by the State when arriving at their bid price. The contractors encountered considerably more rock than they had estimated

and sued for their additional costs. The Court found that the State had made no false representations and the mistake was made by the contractors because they had misinterpreted the borings and made an erroneous assumption that the rock was level. In ruling against the contractors, the Court explained, “[t]he contractors, having entered into a solemn agreement, must abide by the terms thereof. They took a risk for a consideration, and have no right to call upon the courts to protect them against the consequences of erroneous judgment formulated by their own carelessness and failure to make adequate tests and investigation prior to bidding.” Id.; See also, Sunland Construction Co., Inc. v. City of Myrtle Beach, 2008 WL 5378246 (D.S.C.)(finding that the City and its engineer had not breached the warranty of the sufficiency of the plans when neither had misrepresented the subsurface conditions and instead the contractor had misinterpreted the data and made unreasonable assumptions.)

Like in L-J, SCDC did not represent to the prospective bidders the composition of the berms or how much lead could be harvested. SCDC also did not instruct the prospective bidders how to use the information provided in Attachment #1 to calculate the amount of lead present. Instead Mattiola estimated its cost and profit by misinterpreting Attachment #1 and making a number of unreasonable assumptions regarding the information rather than by investigating and taking core samples or making any test borings. For instance, Mattiola misinterpreted the “depth to be cleaned” column as providing the depth where lead would be located rather than the depth SCDC required to be cleaned under the contract for safety purposes. Mattiola also erroneously assumed that it should multiply the “frequency of use” column by the “number of shooters” column in order to determine the number of shooting events.⁵ However, there is no evidence that SCDC recommended or even suggested the estimation

⁵ For example, for Broad River A Mr. Shafer multiplied 300 days of use times 100 shooters to arrive at 30,000 shooting events per year thereby assuming that 100 shooters would use the Broad River A site 300 days per year. Using Mr. Schafer’s method, the three Broad River sites would host 150,000 shooting events each year. (A. 300 days x 100 shooters = 30,000 shooting events. B. 300 days x 200 shooters = 60,000 shooting events. C. 300 days x 200 shooters = 60,000 shooting events.)

methods used by Mattiola. Further, Mattiola admitted it performed only a visual inspection at the site visit at Broad River in the original solicitation.⁶ Mattiola did not present any evidence that it conducted site visits of the other locations as SCDC had offered in the revised solicitation before submitting its offer. There is also no indication that Mattiola submitted any questions or requested clarification.

Therefore, Mattiola failed to prove that SCDC breached an implied warranty of suitability of plans and specifications. Instead, Mattiola, like the contractors in L-J, took a risk and is responsible for its outcome. Accordingly, Mattiola is not entitled to compensation for its additional costs and any lost profits, and its claim is denied.⁷

To the extent that Attachment #1 was unclear or insufficient, the CPO also agrees with SCDC that it was, at best, a patent ambiguity. In the Matter of Singleton Enterprise, 2006 WL 3069473, the Comptroller General explained:

An ambiguity exists where two or more reasonable interpretations of the terms or specifications are possible. A party's particular interpretation need not be the most reasonable to support a finding of ambiguity; rather, a party need only show that its reading of the solicitation provisions is reasonable and susceptible of the understanding it reached...A patent ambiguity exists where the solicitation contains an obvious, gross or glaring error (e.g. where the solicitation provisions appear inconsistent on their face).

As stated above, the parties had different interpretations of the data on Attachment #1, which was apparent on the document's face.

Moreover, the bid contained a Duty to Inquire clause, which stated in part:

Offerors are expected to examine the Solicitation thoroughly and should request an explanation of any ambiguities, discrepancies, errors,

⁶ Mr. Schafer, testified at the hearing that he had experience cleaning thousands of sites and had prepared this bid but admitted that he never visited the Broad River ranges. Instead, his representative, Gary Lubeck, attended the Broad River site visit and described viewing "a lot of lead there." Mr. Lubeck did not attend the hearing.

⁷ Under such a ruling the contractor would typically also be responsible for abiding by its agreement and completing the terms of the contract. However, here SCDC has already cancelled the contract and agreed to not hold Mattiola responsible for completing it. [Ex. 9]

omissions, or conflicting statements in the Solicitation. Failure to do so will be at the Offeror's risk. Offeror assumes responsibility for any patent ambiguity in the Solicitation that Offeror does not bring to the State's attention.

Bidders are responsible for any unanticipated costs arising from patent ambiguities in solicitation documents where they fail to seek clarification from the government. Stratos Mobile Networks USA, LLC v. US, 213 F.3d 1375 (Fed. Cir. 2000); See also, Protest of Ruscon Construction Co., Case No. 1994-10 (SC Procurement Review Panel). Mattiola failed to request an explanation or clarification of the ambiguities. Therefore, Mattiola assumed the risk of misinterpreting the data and is not entitled to compensation for its additional costs and any lost profit.

Although it is largely irrelevant at this juncture, the CPO also finds that Mattiola defaulted on the contract when it refused to proceed without payment by SCDC of \$77,624, which was not contemplated under its offer and for which a price increase was never approved through the proper channels. Mattiola provided the CPO with no direct testimony or written documentation of communications between Mattiola and SCDC of any site problems, the need for secondary separation equipment, or lower than expected yields before September 14, 2009, which was more than six months after the contract began and nearly two months beyond the 120 days that Mattiola had guaranteed to complete the remediation of all thirteen firing ranges. However, the CPO notes that a revised price might have been negotiated with additional effort and negotiation by both parties in the early stages of this matter.

DETERMINATION

Based on the above reasons, Mattiola's claim is denied.⁸

Voight Shealy

R. Voight Shealy
Chief Procurement Officer
for Supplies and Services

Columbia, SC
July 23, 2010

⁸ To the extent that SCDC argues Mattiola left certain sites in disrepair, the CPO declines to address this issue because SCDC did not counterclaim and provide an estimate of its damages in this regard.

STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW

The South Carolina Procurement Code, in Section 11-35-4230, subsection 6, states:

(6) Finality of Decision. A decision pursuant to subsection (4) is final and conclusive, unless fraudulent or unless a person adversely affected requests a further administrative review by the Procurement Review Panel pursuant to Section 11-35-4410(1) within ten days of the posting of the decision in accordance with Section 11-35-4230(5). The request for review must be directed to the appropriate chief procurement officer, who shall forward the request to the panel, or to the Procurement Review Panel, and must be in writing setting forth the reasons why the person disagrees with the decision of the appropriate chief procurement officer. The person also may request a hearing before the Procurement Review Panel. The appropriate chief procurement officer and any affected governmental body shall have the opportunity to participate fully in a later review or appeal, administrative or legal.

Copies of the Panel's decisions and other additional information regarding the protest process is available on the internet at the following web site: www.procurementlaw.sc.gov

FILE BY CLOSE OF BUSINESS: Appeals must be filed by 5:00 PM, the close of business. *Protest of Palmetto Unilect, LLC*, Case No. 2004-6 (dismissing as untimely an appeal emailed prior to 5:00 PM but not received until after 5:00 PM); *Appeal of Pee Dee Regional Transportation Services, et al.*, Case No. 2007-1 (dismissing as untimely an appeal faxed to the CPO at 6:59 PM).

FILING FEE: Pursuant to Proviso 83.1 of the 2010-2011 General Appropriations Act of the South Carolina General Assembly, all requests for administrative review before the South Carolina Procurement Review Panel must be accompanied by a filing fee of two hundred and fifty dollars (\$250.00), payable to the SC Procurement Review Panel. The Panel is authorized to charge the party requesting an administrative review under the South Carolina Code Sections 11-35-4210(6), 11-35-4220(5), 11-35-4230(6) and/or 11-35-4410(4). . . . Withdrawal of an appeal will result in the filing fee being forfeited to the Panel. If a party desiring to file an appeal is unable to pay the filing fee because of hardship, the party shall submit a notarized affidavit to such effect. If after reviewing the affidavit the Panel determines that such hardship exists, the filing fee shall be waived." 2008 S.C. Act No. 310, Part IB, § 83.1. PLEASE MAKE YOUR CHECK PAYABLE TO THE "SC PROCUREMENT REVIEW PANEL."

LEGAL REPRESENTATION: In order to prosecute an appeal before the Panel, a business must retain a lawyer. Failure to obtain counsel will result in dismissal of your appeal. *Protest of Lighting Services*, Case No. 2002-10 (Proc. Rev. Panel Nov. 6, 2002) and *Protest of The Kardon Corporation*, Case No. 2002-13 (Proc. Rev. Panel Jan. 31, 2003).

SCDC FIRING OUTDOOR FIRING RANGE

	BERM SIZE	DEPTH T/B CLEANED	LASTED CLEANED	FREQUENCY OF USE	# OF SHOOTERS	TYPES OF ROUNDS
(1) Allendale C.I., Hwy. #47, Fairfax, SC, 29827	1651x14H	4.5TD x8'H	1992	3 time monthly	12	#8, 00 Buck & .38
(2) A. SCDC 4446 Broad River Rd, Columbia, SC 29210	270Lx23H	4.5TD x8'H	1985	300 days year	100	.38, .40, .45, 12 ga
B. SCDC 4446 Broad River Rd, Columbia, SC 29210	540Lx23H	4.5TD x8'H	1985	300 days year	200	.38, .40, .45, 12 ga
C. SCDC 4446 Broad River Rd, Columbia, SC 29210	540Lx23H	4.5TD x8'H	1985	300 days year	200	.38, .40, .45, 12 ga
(3) Evens C.I., Hwy. #9, Bennettsville, SC 29312	100Lx11H	2.5TD x 8'H	2005	4 time yearly	60	0.38
(6) Kershaw C.I., 4848 Gold Mine Hwy, Kershaw, SC 29067	100Lx9H	2.5TD x 8'H	2001	2 time monthly	10	.38, .40, 12ga#2 & 00
(7) Lee C.I., 1204 East Church Street, Bishopville, SC 29010	40LxX12H	4.5TD x8'H	1992	2 time monthly	30	.38 & 1.58 shotgun lead
(8) MacDougall C.I., 1516 Old Gilliland Ridgeville, SC 29472	150Lx13H	4.5TD x8'H	1983	1 time monthly	100	.38&.45& 00 shotgun
(9) McCormick C.I., Hwy 378, McCormick, SC 29835	100Lx18H	2.5TD x 8'H	2005	1 time monthly	15	.38&.40&.12ga
(10) Ridgeland C.I., East Frontage Road, Ridgeland, SC 29936	140Lx11H	4.5TD x8'H	1998	2 time monthly	20	.38 & 00buck & #8
(11) Turberville C.I., Hwy. 378, Turberville, SC 29162	132Lx20H	4.5TD x8'H	1997	3 time monthly	35	.38 & 12 ga
(12) Tyger River C.I., 200 Prison Road, Enoree, SC 29335	120Lx10H	4.5TD x8'H	1992	1 time monthly	40	.38 & 12ga
(13) Wateree River C.I., State Farm Rd, Rembert, SC 29128	150Lx12H	4.5TD x8'H	2003	2 time monthly	42	.38&.40& 12GA

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LEAH EDWARDS GARLAND
BENJAMIN C. BRUNER

November 30, 2009

AUTHOR'S E-MAIL: BROBINSON@brunerpowell.com

Via U.S. Mail and Certified Mail, Return Receipt Requested

Certified Mail Receipt No. 7008 2810 0000 9486 0812

Mr. John Stevens, CPPB
State Procurement Officer
Materials Management Office
Budget and Control Board
1201 Main St. , Suite 600
Columbia, SC 29201

RE: P.O. No. 300193180
Solicitation No. 358347-1 Lead Removal from Firing Ranges
Our File No. 2-2038-100

Dear Mr. Stevens:

I represent Mattiola Services, LLC in the above matter. Mattiola Services bid on and was awarded the purchase order for removal of lead from 13 firing ranges. The information given by the Department of Corrections to the bidders included a chart showing each range, and for each range the last date upon which the range was cleaned, the number of days the range was open, the number of persons using the range, the size of the berm, and the depth and height to be cleaned. Under Robert E. Lee & Co. v. Greenville, 248 S.C. 84. 149 S.E.2d 55 (SC 1966), the bidders were entitled to rely upon the information provided by the Department absent any language restricting that reliance. There is no such language.

On the site visit, the Mattiola Services representative noticed a significant amount of lead visible on the berm, leading him to conclude that the information given in the chart was correct. Upon commencing the work, Mattiola Services discovered that there was significantly less lead in the berms than the chart would indicate. In fact, at the Broad River facility, there was only 1.4% as much lead as one would expect in the three ranges combined. It is inconceivable that the chart could be correct and the volume of lead be as small as it proved to be.

Mattiola Services intended to recover lead only by use of primary separation techniques, and not secondary techniques. To make sure it did not have some undiscovered problem with the primary separation technique, Mattiola Services used secondary separation techniques.

However, the secondary separation technique did not significantly increase the amount of lead recovered.

Mattiola Services has a long history of shooting range remediation. It has experience in calculating the expected lead yield based upon the number of shooters, the days the range is open, the calibers being used, and the length of time that has passed since the last remediation. Its experience also includes the amount of lead it will recover as a fraction of the theoretical volume of lead in the berm. Based upon that experience, Mattiola Services estimated its costs and profits. The misleading chart was used to make the calculations.

The misleading chart is the direct cause of the zero dollar bid entered by Mattiola Services. Had the chart correctly indicated the amount of lead in the berms, Mattiola Services would have bid a much higher number. However, the profit Mattiola Services anticipated is the measure of damages. Mattiola Services anticipated costs of \$98,582, revenue of \$178,073, and a profit of \$79,491 on this work. Instead, Mattiola Services had costs of \$100,695 on the work it performed, with an income of \$23,071, for a net loss of \$77,624.

Mattiola Services did not complete the project for two reasons. Rain hampered its efforts throughout the period, and the increased effort to recover lead at the Broad River facility delayed work on the other sites. Once it discovered that the chart was materially misleading, Mattiola Services was entitled to stop work on the project until it could either renegotiate the payment term or until it became apparent that the Department would not pay. In its letter of September 24, 2009, the Department made it clear that it was terminating the agreement. Accordingly, Mattiola Services is no longer required to proceed. Early termination mitigates the Departments' damages.

Attached please find a copy of a letter dated 9/14/09 from Mattiola Services to SCDOC, and an answering letter from SCDOC dated September 24, 2009, along with the letter of 2/10/09 that accompanied the bid. I have also provided a copy of a spreadsheet entitled Led Production Analysis. Please note that the line that reads "712,290 Recovered lbs" near the bottom should actually indicate the amount of lead theoretically recoverable, not recovered. The "Actual lbs" column shows the actual lead recovered. The accompanying spreadsheet entitled Mattiola Services LLC Cost and Claim Information shows the actual lead recovered, the actual value of that lead, the actual cost of reclamation, the anticipated costs and reclamation, and the total value of the claim.

Mattiola Services claims entitlement to \$157,114, its anticipated profit plus the loss actually sustained. Its claim is based upon theories of breach of contract, negligent misrepresentation, unjust enrichment, and rescission of contract, all founded upon the misleading and defective chart presented by the Department to all the bidders.

Mr. John Stevens, CPPB
November 30, 2009
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Mattiola Services made a claim to Ms. Ruthie Bishop on November 9, 2009. However, I understand that Ms. Bishop was not the correct person to whom that claim should have been made. Please consider this letter the Request for Resolution required by S.C. Code of Laws (Ann.) § 11-35-4230(2) (2006). With my kindest regards, I am,

Sincerely,

A handwritten signature in black ink that reads "Brian P. Robinson". The signature is written in a cursive style with a long horizontal flourish at the end.

Brian P. Robinson

CC: Mr. Tom Schafer